
STATUTORY INSTRUMENTS

1997 No. 170

DEFENCE

The Courts-Martial (Royal Navy) Rules 1997

Made - - - - *12th February 1997*
Laid before Parliament *14th February 1997*
Coming into force - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred on him by sections 52I(10), 53A, 58, 60(5), 61(5) and 70 of the Naval Discipline Act 1957(1), hereby makes the following Rules:—

PART I
PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Courts-Martial (Royal Navy) Rules 1997 and shall come into force on 1st April 1997.

Interpretation

2. In these Rules—

“accused’s friend” shall be construed in accordance with rule 13;

“the Act” means the Naval Discipline Act 1957;

“commanding officer”, in relation to an accused, means the officer who is for the time being in immediate command of the ship or naval establishment to which the accused belongs;

“commencement of the trial” shall be construed in accordance with rule 34;

“hearing for directions” shall be construed in accordance with rule 22;

“the judge advocate”—

(i) in relation to a court-martial, means the judge advocate appointed by or on behalf of the Chief Naval Judge Advocate to be a member of the court-martial;

(1) 1957 c. 53; sections 52I(10), 53A, and 61(5) were inserted by, section 58 was substituted by, and section 60(5) was amended by the Armed Forces Act 1996 (c. 46), section 5 and Schedule 1. Section 70 was substituted by the Armed Forces Act 1996, section 16 and Schedule 5.

- (ii) in relation to a hearing for directions, means the judge advocate appointed under rule 9(1)(a);
- “pre-trial hearing” shall be construed in accordance with rule 25;
- “the prosecutor” means the prosecuting authority or any prosecuting officer appointed by the prosecuting authority;
- “prosecution papers” has the meaning assigned to it in rule 7; and
- “special finding” shall be construed in accordance with rule 63.

Service on an accused

- 3.**—(1) Unless the context otherwise requires, where under these Rules any document or notice is to be served on an accused by the court administration officer or the prosecutor, it may be served—
- (a) by sending it to the commanding officer of the accused;
 - (b) by delivering it to the accused personally;
 - (c) by leaving it for the accused with a person at the accused’s usual place of abode; or
 - (d) by post in a letter addressed to the accused at his last known or usual place of abode.
- (2) Where a document or notice is received by the commanding officer in accordance with paragraph (1)(a) above, he shall serve it on the accused as soon as is practicable.

PART II

PROSECUTION OF OFFENCES

Referring a case to the prosecuting authority

- 4.** If the higher authority refers a case in respect of an accused to the prosecuting authority in accordance with section 52C(1) of the Act, he shall forward to the prosecuting authority—
- (a) a copy of any report concerning the case prepared by the Royal Naval Regulating Branch or other investigator;
 - (b) the offence or a list of offences alleged against the accused;
 - (c) a list of any potential witnesses;
 - (d) any written statements of the potential witnesses;
 - (e) any statements made by the accused including records or transcripts of interviews conducted under caution;
 - (f) a list of any exhibits;
 - (g) any other evidence, real or documentary.

Charge sheet

- 5.**—(1) A charge sheet shall state—
- (a) the name, service number, rank or rate of the accused;
 - (b) the name of the ship or establishment in which the accused is serving;
 - (c) particulars of how the accused is subject to or otherwise triable under the Act;
 - (d) any charge preferred against the accused.

(2) A charge sheet shall contain the whole of the issue or issues to be tried at one time and shall be signed and dated by the prosecutor.

Charges and joinder

6. The rules contained in Schedule 1 to these Rules shall be observed in proceedings before courts-martial.

Notifying the accused's commanding officer

7.—(1) Where the prosecutor has preferred a charge against an accused to be tried by court-martial, the prosecutor shall notify the commanding officer of the accused of the charge by sending to the commanding officer the prosecution papers.

(2) In these Rules, “the prosecution papers” means—

- (a) a copy of the charge sheet;
- (b) a statement of the prosecution case;
- (c) a list of any witnesses whom the prosecutor proposes to call and copies of their statements;
- (d) a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts;
- (e) notice of any additional evidence which the prosecutor intends to adduce;
- (f) a record of any previous convictions of—
 - (i) the accused; and
 - (ii) all witnesses to be called by the prosecutor; and
- (g) a list of all unused material.

Notifying the court administration officer

8.—(1) The prosecutor shall notify the court administration officer of any charge which he has preferred by sending to him a copy of the prosecution papers.

(2) On receipt of a copy of the prosecution papers from the prosecutor, the court administration officer shall send—

- (a) to the commanding officer of the accused—
 - (i) a statement explaining the opportunities available to an accused for legal assistance, and
 - (ii) a statement explaining the rights of an accused facing court-martial trial;
- (b) to the Chief Naval Judge Advocate, a copy of the prosecution papers.

Appointment of judge advocate

9.—(1) —On receipt of a copy of the prosecution papers, the Chief Naval Judge Advocate, or an officer on his behalf, shall appoint a judge advocate—

- (a) to conduct any hearing for directions;
- (b) to be a member of the court-martial.

(2) After the Chief Naval Judge Advocate has appointed a judge advocate in accordance with this rule, he shall notify the court administration officer, who shall serve notice in writing of the appointment on the accused and the prosecutor.

Notification of trial

10.—(1) This rule applies where the commanding officer has been notified in respect of an accused under his command that the prosecutor has preferred a charge.

(2) As soon as is practicable after receipt of—

- (a) the prosecution papers; and
- (b) the statements provided for in rule 8(2)(a) above,

the commanding officer shall notify the accused that he is to be tried by court-martial.

(3) On notifying the accused in accordance with paragraph (2) above, the commanding officer shall serve the accused with—

- (a) the prosecution papers;
- (b) a form for the accused's notice of alibi;
- (c) the statements explaining the rights of an accused and concerning legal assistance provided for in rule 8(2)(a) above;
- (d) a form for notifying the court administration officer of his accused's friend; and
- (e) a form for acknowledgement of receipt.

(4) At the time when the prosecution papers are given to the accused, the commanding officer shall inform the accused of the effect of section 11 of the Criminal Justice Act 1967(2) (notice of alibi).

Discontinuing proceedings before trial

11. If before the commencement of the trial of a charge the prosecutor discontinues proceedings on that charge, he shall serve notice in writing on the accused and the court administration officer.

Amending charges and additional charges before trial

12.—(1) If before the commencement of the trial of a charge the prosecutor—

- (a) amends, or substitutes another charge or charges for, that charge;
- (b) prefers an additional charge against the accused and directs that the additional charge shall be tried at the same court-martial trial as the original charge,

he shall serve notice on the accused and the court administration officer.

(2) Except with the consent of the accused, notice under paragraph (1) above shall not be served less than 24 hours before the time appointed for the trial of the original charge.

(3) Where the prosecutor is required to serve notice on the accused in accordance with this rule, he shall do so by sending to the accused's commanding officer or, with the consent of the accused, by serving directly on the accused—

- (a) a copy of the amended charge sheet;
- (b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet; and
- (c) where in the opinion of the prosecutor it is necessary, a statement explaining the effect of section 11 of the Criminal Justice Act 1967 and a form for the accused's notice of alibi.

(2) 1967 c. 89; section 11 is applied to proceedings before courts-martial by section 12 of the Criminal Justice Act 1967, subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173). Section 12 was amended by the Armed Forces Act 1976 (c. 52), section 11 and Schedule 5 and the Armed Forces Act 1996, section 5 and Schedule 1.

(4) Where any document is received by the commanding officer in accordance with paragraph (3) above, he shall serve it on the accused as soon as is practicable.

(5) Where the prosecutor is required to serve notice on the court administration officer in accordance with this rule, he shall do so by sending to the court administration officer or, if less than 24 hours before the time appointed for the trial of the original charge, the judge advocate—

- (a) a copy of the amended charge sheet; and
- (b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

PART III

GENERAL MATTERS

Conduct of the defence

13.—(1) An accused who has been notified that he is to be tried by court-martial shall be afforded a proper opportunity for preparing his defence.

(2) The accused may appoint a representative to act for him in connection with his court-martial and that person shall be known as the accused's friend.

(3) Any right or responsibility which accrues to the accused by virtue of these Rules (except pleading to a charge) may be exercised by the accused's friend on his behalf.

(4) The accused shall inform the court administration officer of the name and address of his accused's friend as soon as is practicable after an accused's friend has been appointed.

(5) The accused shall be allowed proper communication with his accused's friend.

(6) An accused's friend may represent an accused before a court-martial and at a hearing for directions if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(3);
- (b) an advocate or a solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
- (d) any person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

Ordering the court

14.—(1) On receipt of a copy of the prosecution papers, the court administration officer shall order a court-martial to assemble to try the accused.

(2) Not less than 24 hours before the time appointed for the trial, a copy of the assembling order shall be served on—

- (a) the accused and the accused's friend; and
- (b) the officer members of the court, the judge advocate and the prosecuting authority.

(3) If the court administration officer amends or withdraws the order assembling the court-martial, he shall serve a copy of the amended order or serve notice in writing as appropriate on—

(3) 1990 c. 41.

- (a) the accused and the accused's friend; and
 - (b) the officer members of the court, the judge advocate and the prosecuting authority.
- (4) The court administration officer may not withdraw the order assembling a court-martial after the time appointed for the trial.

Ineligibility for membership of courts-martial

15. An officer shall not be eligible to be a member of a court-martial for the trial of an accused if—

- (a) he serves, directly or indirectly, under the command of—
 - (i) the higher authority who referred the case against the accused to the prosecuting authority;
 - (ii) the prosecuting authority; or
 - (iii) the court administration officer;
- (b) (unless he is the judge advocate) he—
 - (i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (ii) is an advocate or a solicitor in Scotland;
 - (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
 - (iv) has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

Appointment of court officials

16.—(1) The court administration officer shall appoint in the order assembling the court-martial a person to act as the clerk of the court.

- (2) The court administration officer may appoint at any time a person or persons to act as—
- (a) provost marshal,
 - (b) court recorder,
 - (c) officer of the court,
 - (d) interpreter,

at a court-martial.

Delegation of the court administration officer's functions

17. The court administration officer appointed by the Defence Council in accordance with section 53A of the Act may delegate any of his functions to persons appointed to act as court administration officers under his direction.

Additional evidence before trial

18. If before the commencement of the trial the prosecutor wishes to adduce at trial any evidence additional to that contained in the prosecution papers, he shall serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

Witnesses not called by the prosecutor

- 19.—(1) This rule applies where the prosecutor does not intend to call as a witness—
- (a) any person whose statement has been served on the accused as part of the evidence for the prosecution;
 - (b) any person in respect of whose evidence he has served notice under rule 47 below.
- (2) Where this rule applies, unless the accused waives the requirement, the prosecutor shall—
- (a) serve notice in writing on the accused that he does not intend to call that person; or
 - (b) tender that person at trial for cross-examination by the accused.

Transcript of interview

20.—(1) Where an interview with an accused has been recorded on tape he may at any time apply in writing to the court administration officer for a transcript of that interview or any part of it.

(2) Where an application is made under paragraph (1) above, the transcript shall be supplied to the accused as soon as is reasonably practicable.

Witness summons

21.—(1) Where any person, whether subject to the Act or not, is required to give evidence at a hearing for directions or at a court-martial, the court administration officer may summon the witness by issuing a witness summons in the form set out in Schedule 2 to these Rules.

(2) As soon as is practicable after the accused has been notified that he is to be tried by court-martial, the court administration officer shall serve notice in writing on the accused that any person whom he requires to give evidence may be summoned on his behalf by the court administration officer.

(3) If the accused requires the court administration officer to summon a witness, the accused shall provide to the court administration officer sufficient information in sufficient time to enable a summons to be served.

- (4) A witness summons shall be served on a witness—
- (a) by delivering it to him personally;
 - (b) by leaving it for him with a person at the witness's usual place of abode;
 - (c) by post in a letter addressed to him at his last known or usual place of abode; or
 - (d) where the witness is subject to military law, air force law or the Act, through his commanding officer.

PART IV

HEARING FOR DIRECTIONS

Convening a hearing for directions

22.—(1) The judge advocate may request the court administration officer to convene a hearing for the purpose of giving directions—

- (a) of his own motion; or
- (b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall in these Rules be referred to as a hearing for directions.

- (2) An application for a hearing for directions shall—
 - (a) be made to the judge advocate in the form set out in Schedule 2 to these Rules; and
 - (b) specify the reason for which it is made.
- (3) The applicant shall serve notice in writing of the application on every other party to the proceedings and the court administration officer.
- (4) Before requesting the court administration officer to convene a hearing for directions, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.
- (5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay.
- (6) On receipt of a request from the judge advocate under paragraph (1) above, the court administration officer shall—
 - (a) appoint the date, time and place at which the hearing for directions will take place;
 - (b) issue a notice in writing of the date, time and place appointed;
 - (c) list in the notice such of the matters contained in Schedule 3 to these Rules to be addressed at the hearing as the judge advocate may request;
 - (d) serve the notice on the parties to the proceedings;
 - (e) arrange for the attendance at the hearing of a clerk and a court recorder.

Hearing for directions in chambers

- 23.—(1) A hearing for directions shall take place before the judge advocate in chambers.
- (2) Except with the leave of the judge advocate, the only persons entitled to be present at a hearing for directions are the prosecutor, the accused, the accused's friend, the court administration officer, the clerk, the court recorder and any interpreter.

Substance of a hearing for directions

- 24.—(1) The prosecutor and the accused shall address the judge advocate at the hearing for directions on such of the matters contained in Schedule 3 to these Rules as are indicated in the notice convening the hearing.
- (2) Paragraph (1) above is without prejudice to the right of the judge advocate or any party to the proceedings to raise at the hearing for directions any other matter.
- (3) The judge advocate may at a hearing for directions make such directions as appear to him to be necessary to secure the proper and efficient trial of the case.
- (4) The court administration officer shall serve a copy of the transcript of the hearing for directions on the judge advocate, the prosecutor and the accused before the court-martial.

PART V

PROCEEDINGS AT COURT-MARTIAL

Pre-trial hearing

- 25.—(1) The judge advocate may request the court administration officer to order a hearing to take place at the court-martial before the commencement of the trial of an accused—

(a) of his own motion; or
(b) on the application of the prosecutor or accused for such a hearing;
and such a hearing shall in these Rules be referred to as a pre-trial hearing.

(2) An application for a pre-trial hearing shall—

- (a) be made to the judge advocate in the form set out in Schedule 2 to these Rules; and
(b) specify the reason for which it is made.

(3) An applicant shall serve notice in writing of the application with a time estimate of the length of the pre-trial hearing on every other party to the proceedings and the court administration officer.

(4) Before requesting the court administration officer to order a pre-trial hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay.

(6) On receipt of a request from the judge advocate under paragraph (1) above, the court administration officer shall—

- (a) issue an order assembling the court-martial; or
(b) if the order assembling that court-martial has already been issued, amend that order;

so that the order shall specify—

- (i) the date and time at which the pre-trial hearing before the judge advocate shall take place; and
(ii) the date and time at which the members of the court other than the judge advocate shall assemble for the trial.

(7) Nothing in this rule shall prevent the judge advocate from ordering a pre-trial hearing after the full court has assembled.

Challenges and oaths at a pre-trial hearing

26.—(1) Where a pre-trial hearing takes place, rules 31 and 33 below shall be complied with so far as is necessary at the beginning of the pre-trial hearing, except that—

- (a) the accused may not state his objection to any member of the court other than the judge advocate; and
(b) the judge advocate shall not administer an oath or affirmation to any member of the court;

until after the full court has assembled.

(2) Where paragraph (1) above applies, the order of events set out in rules 31 and 33 below in respect of court members not present at the pre-trial hearing shall be modified accordingly.

Substance of a pre-trial hearing

27.—(1) Without prejudice to the right of any party to the proceedings to raise any other challenge, objection, plea or application, application may be made at a pre-trial hearing to—

- (a) challenge the jurisdiction of the court;
(b) object to a charge on the grounds that it is not correct in law;
(c) plead that the court is debarred from trying him;
(d) apply for severance of the charges.

(2) At a pre-trial hearing the judge advocate may make an order or ruling as to—

- (a) any question as to the admissibility of evidence;
- (b) any other question of law, practice or procedure relating to the case.

(3) An order or ruling made under this rule shall have effect until the conclusion of the trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged.

(4) If the judge advocate allows any application such that there is no charge remaining to which the accused can be required to plead, he shall order the court administration officer to dissolve the court.

President and members

28.—(1) The president shall be responsible for conducting the trial in a manner befitting a court of justice and in accordance with the traditions of the Royal Navy.

(2) Members of the court, other than the judge advocate, shall sit in order of seniority.

(3) A member shall sit in the substantive rank he holds in Her Majesty's naval forces notwithstanding that he may have been appointed to a ship in a superior rank, save that a Commodore shall sit as a Commodore and rank above all Captains and sit with other Commodores according to their seniority as Captains.

(4) If on full pay, an officer on the Retired List or Emergency List of the Royal Navy shall sit in the order in which he takes rank and command, but if he holds acting rank he shall sit in the order in which he would have taken rank and command if he had not been granted acting rank.

The judge advocate

29.—(1) The judge advocate shall be responsible for ensuring that the trial is conducted in accordance with law.

(2) The judge advocate has a duty to ensure that the accused, particularly if he is not represented, does not suffer any disadvantage in consequence of his position as such or otherwise.

(3) The judge advocate shall be responsible for ensuring that a proper record of the proceedings is made.

Judge advocate sitting alone

30.—(1) Where—

- (a) the accused makes a submission of no case to answer; or
- (b) for any reason the judge advocate is of the opinion that he should rule on a question in the absence of the other members of the court;

the judge advocate may direct the other members of the court to withdraw.

(2) Subject to paragraph (5) below, while the other members of the court are absent the judge advocate shall exercise all the powers and duties of the court, including the president.

(3) After the other members of the court have withdrawn from the court, the judge advocate shall hear the arguments and evidence relevant to the point at issue and shall give his ruling and his reasons for it.

(4) After the judge advocate has given his ruling, the other members of the court shall return to the court and the judge advocate may, if it seems appropriate to him, announce his ruling to them.

(5) If, while the judge advocate is sitting alone under this rule or at a pre-trial hearing, a person subject to the Act commits an offence under section 38(1)(4) of the Act, the judge advocate may report the occurrence to—

- (a) the president; or
- (b) if the offence is committed during a pre-trial hearing, the commanding officer of the offender.

Challenges by the accused

31.—(1) This rule applies subject to rule 26 above.

(2) On assembly of the full court—

- (a) the order assembling the court-martial (including the name of any officer therein);
- (b) the name of the judge-advocate; and
- (c) the names of the clerk of the court and any interpreter

shall be read to the accused.

(3) The accused may state the name of any person to whom he objects.

(4) If more than one person is objected to, the objection to each shall be disposed of separately in the following order—

- (a) the judge advocate;
- (b) the president;
- (c) the other members of the court in reverse order of seniority;
- (d) any spare member;
- (e) the clerk of the court;
- (f) any interpreter.

(5) The accused may make a statement and call any person to make a statement in support of his objection.

(6) A person other than the judge advocate to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) Each objection shall be considered by the judge advocate and his determination announced in open court.

(8) If an objection to the president is allowed, the judge advocate shall announce that the court is dissolved.

(9) If an objection to the clerk of the court or interpreter is allowed, the judge advocate shall adjourn proceedings until the court administration officer has appointed a replacement.

(10) Where a court is assembled to try two or more accused separately and one accused objects to the president or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

Oaths and affirmations

32. An oath or affirmation shall be administered in the form and manner set out in Schedule 4 to these Rules.

(4) Section 38 was amended by the Armed Forces Act 1971 (c. 33), section 23(3) and the Criminal Justice Act 1982 (c. 48), section 58 and Schedule 8.

Administration of oaths and affirmations

33.—(1) This rule applies subject to rule 26 above.

(2) After the accused has been given the opportunity to challenge the members and officials of the court, oaths or affirmations shall be taken in the presence of the accused.

(3) The judge advocate shall take his oath or affirmation.

(4) The judge advocate shall administer an oath or affirmation to—

- (a) the president;
- (b) each other member of the court;
- (c) the clerk of the court;
- (d) any interpreter;
- (e) any officer or other person in attendance for instruction.

Commencement of the trial

34.—(1) For the purposes of the Act and these Rules the trial of an accused commences immediately after the last court member has been sworn.

(2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining to which the accused can be required to plead, he shall dissolve the court.

Severance

35. Where—

- (a) an accused is charged with more than one offence; or
- (b) two or more accused are charged in the same charge sheet;

and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

- (i) order the court to try only one or more charges;
- (ii) order the court to try only one or more accused;
- (iii) leave any charge or any accused to be tried by a new court.

Plea to the charge

36.—(1) The accused shall be arraigned by the judge advocate after the commencement of the trial.

(2) The accused shall be required to plead separately to each charge on which he is arraigned.

(3) Where the court is empowered to make a special finding, the accused may plead guilty to the offence subject to the matters as would merit the special finding.

Guilty plea

37.—(1) If an accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before the court accepts the plea, satisfy himself that the accused understands—

- (a) the nature of the charge;
- (b) the general effect of the plea; and
- (c) the difference in procedure following pleas of guilty and not guilty.

- (2) The court shall not accept a plea of guilty if—
- (a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea;
 - (b) the judge advocate, having regard to all the circumstances, considers that the court should not accept the plea;
 - (c) the accused is liable, if convicted, to a sentence of death.
- (3) Where—
- (a) a plea of guilty is not accepted by the court; or
 - (b) the accused does not plead to the charge or does not plead to it intelligibly,
- the court shall enter a plea of not guilty.

Alternative charges

38.—(1) Where an accused pleads guilty to the more serious of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of that charge and shall not proceed with the lesser alternative charge or charges.

(2) Where an accused pleads guilty to the lesser of two or more alternative charges, the court may—

- (a) proceed as if the accused had pleaded not guilty to all the charges; or
- (b) record a finding of guilty on the charge to which the accused has pleaded guilty and not proceed with the more serious alternative charge or charges.

Additional charges during trial

39.—(1) If after the commencement of the trial the prosecutor intends to seek the leave of the court to prefer an additional charge, he shall unless the accused waives the requirement serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1) above, he may apply for an adjournment of the trial.

Changes to the charge sheet during trial

40.—(1) If after the commencement of the trial the prosecutor intends to—

- (a) amend, or substitute another charge or charges for, a charge;
- (b) discontinue proceedings on a charge;
- (c) prefer an additional charge;

the prosecutor shall seek the leave of the court.

(2) Where the court gives leave to discontinue proceedings on a charge, the court may close to consider whether to give the direction provided for in section 52I(13) of the Act.

(3) Any direction referred to in paragraph (2) above shall be given in open court.

Changes to the charge sheet by the court

41.—(1) If after the commencement of the trial it appears that there is in the charge sheet—

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission;

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial prior to deliberation on the finding on a charge it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend that charge, the court may do so.

Procedure after guilty plea

42.—(1) This rule applies where—

- (a) the court has accepted only a plea or pleas of guilty; or
- (b) the court has accepted a plea or pleas of guilty and the prosecutor does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Before the court records a finding of guilty, the prosecutor shall address the court on the prosecution case.

(4) If the judge advocate is satisfied that the court may properly record a finding of guilty, the court shall record such a finding.

Mixed pleas

43.—(1) This rule applies where—

- (a) the court has accepted pleas of guilty and not guilty on one charge sheet; and
- (b) the prosecutor proceeds to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Unless the judge advocate directs otherwise, the trial of any charge to which an accused has pleaded not guilty shall proceed in accordance with these Rules before the court considers any guilty plea.

(4) The prosecutor, so far as is possible, shall not—

- (a) address the court on any fact, or
- (b) lead evidence,

relating to a charge to which any accused has pleaded guilty, except where that fact or evidence relates also to a charge to which any accused has pleaded not guilty.

(5) When summing up in the trial of any charge to which an accused has pleaded not guilty, the judge advocate shall warn the court to disregard any charge to which any accused has pleaded guilty.

(6) After the court has announced its finding on the charge or charges to which the plea was not guilty, the prosecutor shall address the court on the prosecution case in respect of any charge to which an accused has pleaded guilty.

(7) If the judge advocate is satisfied that the court may properly record a finding of guilty in respect of any charge to which an accused has pleaded guilty, the court shall record such a finding.

Dispute on facts after guilty plea

44.—(1) This rule applies where the accused has pleaded guilty to any charge, but the prosecutor does not accept the factual basis on which that plea is made.

(2) Before the court records a finding of guilty in respect of that charge, any issue of fact may be tried and the prosecutor and the accused may call any witness to give evidence about the facts of the case.

(3) The court shall sit in closed court while deliberating on its finding on the issue of fact.

(4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court by the president.

(5) The judge advocate shall not be present while the other members of the court are deliberating on the issue of fact and shall not be entitled to vote on the finding.

Change of plea

45.—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may withdraw his plea and substitute a plea of guilty.

(2) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may withdraw his plea and substitute a plea of not guilty.

(3) Where an accused changes his plea, the court shall proceed so far as is necessary as if the initial plea to that charge were the plea substituted.

Procedure after not guilty plea

46.—(1) The prosecutor shall make an opening address based on the statement of the prosecution case in the prosecution papers setting out the facts supporting the charge which he intends to establish.

(2) The witnesses for the prosecution shall then be called to give their evidence.

Additional evidence during trial

47.—(1) If after the commencement of the trial the prosecutor intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.

(2) Where notice and particulars are served on the accused in accordance with paragraph (1) above, or where evidence is adduced without such notice being given, he may apply for an adjournment of the trial.

Expert evidence

48.—(1) Expert evidence shall not be adduced at trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer not less than 14 days before the date appointed for the trial a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) above shall be in writing unless every other party consents to it being made orally.

Exhibits

49.—(1) Any document or thing admitted in evidence shall be made an exhibit and marked sequentially with either a number or a letter.

(2) The clerk of the court shall maintain a list of exhibits.

(3) Each exhibit, or a copy certified by the clerk of the court as a true copy, shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit, or a copy, with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody.

Presence of witnesses

50.—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw for the duration of the discussion.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate for any reason considers his presence to be undesirable.

Evidence through television link

51.—(1) Any application by the prosecutor or an accused for leave under section 32 of the Criminal Justice Act 1988⁽⁵⁾ for evidence to be given by a witness through a live television link shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless, not less than 28 days before the date appointed for the trial, the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the judge advocate stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18, the date of birth of the witness;
- (d) the country and place where it is proposed the witness will be when giving evidence; and
- (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) Where the court gives leave for a witness under the age of 14 to give evidence through a live television link, the witness shall be accompanied by a person acceptable to the court, and, unless the court otherwise directs, by no other person.

Video recordings of testimony from child witnesses

52.—(1) Any application by the prosecutor or an accused for leave under section 32A of the Criminal Justice Act 1988⁽⁶⁾ for evidence to be given by a witness by means of a video recording shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless, not less than 28 days before the date appointed for the trial, the party making the application has served a notice in the form set out in Schedule 2 to these Rules, together with a copy of the video recording to which the application relates, on every other party, the court administration officer and the judge advocate stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18, the date of birth of the witness;
- (d) the date on which the video recording was made;

(5) 1988 c. 33; section 32(1)–(3) applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592) subject to the modifications specified therein.

(6) Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. Section 32A applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 subject to the modifications specified therein.

- (e) that in the opinion of the applicant the witness is willing and able to attend the court-martial for cross-examination; and
- (f) the circumstances in which the video recording was made.

Examination of witnesses

53.—(1) A witness may be—

- (a) examined by the party which called him;
- (b) cross-examined by any other party to the proceedings; and
- (c) on the conclusion of any cross-examination, re-examined by the party which called him on matters arising out of the cross-examination.

(2) The person examining a witness shall question the witness orally and unless an objection is made the witness shall reply immediately.

(3) An objection may be made by the witness, the judge advocate, the prosecutor or the accused whereupon the witness shall not reply until the objection has been disposed of.

(4) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

Questioning by the court

54.—(1) The court may question any witness.

(2) After the witness has replied, the parties to the proceedings may ask the witness such questions arising from his answer as may be allowed by the judge advocate.

Recall of witnesses

55.—(1) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may, at any time before the judge advocate begins to sum up—

- (a) call any witness whom the court has not already heard;
- (b) recall a witness;
- (c) permit the accused or the prosecutor to recall a witness.

(2) If a witness is called or recalled under this rule, the parties to the proceedings may ask the witness such questions as may be allowed by the judge advocate.

Submission of no case to answer

56.—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which it relates and such finding shall be announced in open court.

(3) If the submission is not allowed, the court shall proceed with the trial of the offence as charged.

Finding of not guilty before the conclusion of the defence

57. The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecutor has been given an opportunity to address the court on the question, and such finding shall be announced in open court.

The case for the defence

58.—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

- (a) that he may give evidence in his defence if he wishes, but he is not obliged to do so;
- (b) the consequences of choosing to remain silent at trial;
- (c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecutor and questioned by the court; and
- (d) that he may call witnesses on his behalf.

(2) The judge advocate shall ask the accused—

- (a) whether he intends to give evidence in his defence;
- (b) whether he intends to call any witnesses on his behalf; and
- (c) if he intends to call witnesses, whether they are witnesses to fact or to character.

(3) Where the accused intends to call a witness to the facts of the case, other than himself, he may make an opening address outlining the case for the defence before the evidence is given.

Witnesses for the defence

59. Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

Further evidence

60. With the leave of the judge advocate, the prosecutor may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecutor, could not—

- (a) properly have dealt with before the accused disclosed his defence; or
- (b) reasonably have foreseen.

Closing addresses

61.—(1) Subject to paragraph (4) below, the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the prosecutor.

(3) Where two or more accused are represented by the same accused's friend, he may make only one closing address.

(4) Except with the leave of the judge advocate, if the accused is not represented and has called in person no witnesses other than himself the prosecutor shall not make a closing address.

Summing up

62. After closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

Special finding

63.—(1) For the purposes of these Rules a special finding is—

- (a) where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding;

- (b) a finding in accordance with section 67 of the Act (power to convict of mitigated offence);
- (c) a finding in accordance with section 68 of the Act (power to convict of alternative offence).

(2) If it appears to the judge advocate that the difference is not so material as to have prejudiced the accused in his defence, the judge advocate may direct the court that a special finding under paragraph (1)(a) above is open to them.

(3) In any case the judge advocate may direct the court that a special finding under paragraph (1) (b) or (c) above is open to them.

(4) Before directing the court on a special finding, the judge advocate shall allow the prosecutor and the accused to address him on the matter.

(5) The court may not reach a special finding unless the judge advocate has directed them that such a finding is open to them.

Deliberation on finding

64.—(1) After the summing up, the judge advocate shall withdraw and the court shall close to deliberate on its finding on each charge.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court may separate for reasonable periods unless the judge advocate directs that in the interests of justice the court shall not separate until the finding has been reached.

(4) The vote of each member of the court on the finding on each charge shall be given orally in reverse order of seniority.

Record of finding

65.—(1) Notwithstanding any minority vote, the finding of the court on each charge shall be recorded in writing, signed by each member of the court except the judge advocate and transmitted to the judge advocate in open court.

(2) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to them and the court shall retire to reconsider its finding.

(3) If the judge advocate is satisfied that the findings are not incorrect in law, he shall countersign the record of the findings and announce them in open court.

PART VI

SENTENCING

Pre-sentence report

66. Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the trial, he shall serve a copy on the accused and the judge advocate before the time appointed for the trial.

Evidence before sentencing

67.—(1) This rule applies where the court has recorded a finding of guilty on any charge.

- (2) Where practicable the court shall take evidence of—
- (a) the accused's age and rank;
 - (b) the accused's service certificate (or equivalent record for officers);
 - (c) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;
 - (d) particulars of any offence (whether under the Act or otherwise) of which the accused has been found guilty (during his service or otherwise) provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(7) shall be clearly marked as such;
 - (e) particulars of the length of time he has been in custody awaiting trial; and
 - (f) details of the accused's pay, terminal benefits and future pension entitlements.
- (3) Unless the accused requires otherwise, the matters referred to in paragraph (2) above need not be adduced in compliance with the strict rules of evidence.
- (4) Where practicable, the court shall consider any pre-sentence report concerning the accused which has been prepared.
- (5) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (2)(d) above where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

Evidence on behalf of the accused

68.—(1) If the accused so requests, any service records of the accused or a duly certified copy of the material entries therein shall be produced to the court by the naval authority in whose custody they reside.

- (2) The accused may—
- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character;
 - (b) produce to the court any document or report; and
 - (c) address the court in mitigation of sentence.
- (3) Unless the prosecutor requires otherwise, any document or report referred to in paragraph (2) (b) above need not be adduced in compliance with the strict rules of evidence.

Offences taken into consideration

69.—(1) Before the court deliberates on sentence, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the court agrees to take into consideration shall be read to the accused by the judge advocate, who shall ask the accused if he admits having committed them.

(3) The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in the list into consideration.

(4) The list shall be signed by the judge advocate and attached to the record of proceedings.

(7) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4.

Deliberation on sentence

70.—(1) While the court sits in closed court to deliberate on sentence the clerk of the court and any officer under instruction are permitted to be present.

(2) Subject to paragraph (6) below, the court shall award one sentence in respect of all the offences of which the accused has been found guilty and all the offences taken into consideration in accordance with rule 69 above.

(3) Subject to paragraph (4) below, the vote of each member of the court as to the sentence shall be given orally in reverse order of seniority.

(4) The president shall vote last and the judge advocate shall vote immediately before him.

(5) In the case of an equality of votes on sentence, the president shall have the casting vote.

(6) The sentence may include a direction that such deductions shall be made from the pay of the accused as may have been made if the accused had been found guilty by the court of the offence taken into consideration as well as of the offence or offences of which he has been found guilty.

Postponement of deliberation on sentence

71. Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate is of the opinion that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused.

Announcement of sentence

72.—(1) Notwithstanding any minority vote, the sentence shall be recorded in writing, dated and signed by the president and each member of the court.

(2) The sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the judge advocate.

(3) The reasons for sentence shall be announced by the president or, if the president so requests, by the judge advocate.

Conclusion of the trial

73.—(1) When each charge on the charge sheet has been disposed of, the judge advocate shall dissolve the court.

(2) The president shall announce in open court that the trial is concluded.

PART VII

REVIEW OF COURT-MARTIAL FINDING AND SENTENCE

The petition

74.—(1) The period within which an accused may present a petition in accordance with section 70(1) of the Act shall be 28 days following the day on which sentence was announced.

(2) A petition presented in accordance with section 70(1) of the Act shall be in writing and signed by the accused, or on his behalf by the accused's friend.

(3) A petition addressed to the Defence Council shall be treated as having been presented to the Defence Council if it is presented by the petitioner—

- (a) to the court administration officer; or
 - (b) where the petitioner is—
 - (i) in custody or detention in any civil prison or institution, to the governor of the prison or institution;
 - (ii) detained in naval detention quarters or in any military or air force establishment, to the commandant of the quarters or establishment.
- (4) A person to whom a petition is presented under paragraph (3)(b) above shall transmit it to the court administration officer immediately upon receipt.

Decision on review

75. Where the reviewing authority completes a review in accordance with section 70 of the Act, it shall—

- (a) if a petition has been presented in accordance with section 70(1) of the Act, or
- (b) if it exercises any of its powers under section 71 of the Act,

communicate its decision, with reasons, to the accused.

PART VIII

MISCELLANEOUS

Bankers' Books Evidence Act 1879

76.—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879⁽⁸⁾ may be exercised for the purposes of a court-martial—

- (a) during the investigation of an alleged offence, by the commanding officer of the accused;
- (b) at a hearing for directions or at a court-martial, by the judge advocate.

(2) The order shall be in the form set out in Schedule 2 to these Rules.

Record of proceedings

77.—(1) The record of proceedings of a court-martial shall consist of a certified transcript or note of evidence of the hearing for directions and the court-martial.

- (2) Any transcript of a shorthand note shall be signed by the shorthand writer.
- (3) Any transcript of a mechanical record shall be signed by the person who transcribed it.
- (4) Any note of evidence shall be signed by the person who made the note.

(5) Except where either is unavailable within a reasonable time to review it, the transcript or note shall be certified by the judge advocate and the clerk of the court, after which it shall be transmitted to the court administration officer.

Circumstances not provided for

78. In any circumstance not provided for by the Act or these Rules such course shall be adopted as appears best calculated to do justice.

(8) 1879 c. 11.

Revocation and savings

79. The Naval Courts-Martial General Orders (Royal Navy) 1991⁽⁹⁾ are hereby revoked, save that they shall continue to apply in relation to any trial by a court-martial which commenced before 1st April 1997 until the conclusion of that trial.

12th February 1997

Nicholas Soames
Minister of State, Ministry of Defence

SCHEDULE 1

Rule 6

CHARGES AND JOINDER

PART I

RULES

1.—(1) A charge sheet shall be in the form specified in Part II of this Schedule or in a form substantially to the like effect.

(2) Where more than one offence is charged in a charge sheet, the statement and particulars of each offence shall be set out in a separate paragraph called a charge, and paragraphs 2 and 3 of this Part shall apply to each charge in the charge sheet as they apply to a charge sheet where one offence is charged.

(3) The charges shall be numbered consecutively.

2.—(1) Subject only to the provisions of paragraph 3 of this Part, every charge sheet shall contain, and shall be sufficient if it contains, a statement of the specific offence with which the accused person is charged describing the offence shortly, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) A charge sheet for a specific offence shall not be open to objection in respect of its form if it is framed in accordance with this Schedule.

3. Where the specific offence with which an accused person is charged in a charge sheet is one created by or under an enactment, then (without prejudice to the generality of paragraph 2 of this Part)—

- (a) the statement of offence shall contain a reference to—
 - (i) the section of, or the paragraph of the Schedule to, the Act creating the offence in the case of an offence created by a provision of an Act;
 - (ii) the provision creating the offence in the case of an offence created by a provision of a subordinate instrument;
- (b) the particulars shall disclose the essential elements of the offence:
Provided that an essential element need not be disclosed if the accused person is not prejudiced or embarrassed in his defence by the failure to disclose it;
- (c) it shall not be necessary to specify or negative an exception, exemption, proviso, excuse or qualification.

4. Where an offence created by or under an enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in a charge sheet charging the offence.

5. It shall be sufficient in a charge sheet to describe a person whose name is not known as a person unknown.

6.—(1) Subject to sub-paragraphs (2) and (3) below, charges for any offences may be joined in the same charge sheet if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.

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(2) An offence under section 16(1)(10) (desertion), section 17(11) (absence without leave) or section 33C(12) (escape from confinement) of the Act may be included in any charge sheet.

(3) An offence under section 31(1) (offences relating to issues and decorations) of the Act may be included in any charge sheet where it arises in connection with a charge under section 16(1) or section 17 of the Act.

PART II

FORM

FOR TRIAL BY COURT-MARTIAL

THE QUEEN V

(introductory words)

charged as follows:—

(statement of offence and particulars of offence)

Date

.....
Prosecuting Authority

SCHEDULE 2

Rules 21, 22, 25, 51, 52 and 76

FORMS

Where any rule requires the use of a form set out in this Schedule, that requirement shall be satisfied by the use of a form substantially to the like effect as the form set out below.

Form 1—Form of summons to witness not subject to the Act

Form 2—Form of summons to witness or witnesses subject to the Act

Form 3—Form of summons to a bank manager

Form 4—Form of application for a hearing for directions

Form 5—Form of application for a pre-trial hearing

Form 6—Form of notice of application for leave to adduce evidence through television link

Form 7—Form of notice of application for leave to tender in evidence a video recording

Form 8—Form of order by commanding officer to permit inspection of bankers' books

Form 9—Form of order by judge advocate to permit inspection of bankers' books

Form 1 FORM OF SUMMONS TO WITNESS NOT SUBJECT TO THE ACT

(10) Section 16(1) was amended by S.I. 1964/488, article 2(1) and Schedule 1 and by the Armed Forces Act 1971 (c. 33), sections 77(1) and 78(4) and Schedule 4.

(11) Section 17 was amended by S.I. 1964/488, article 2(1) and Schedule 1 and by the Armed Forces Act 1971, sections 12(3) and 77(1) and Schedule 4.

(12) Section 33C was inserted by the Armed Forces Act 1971, section 22.

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To (full name)

In the matter of (rank/rate and full name of accused) of (unit)

Whereas I have been informed that your evidence will be material to the trial by court-martial of (rank/rate and full name of accused) of (unit) [*and that you have in your possession and control certain documents which are also material, namely (description of documents)], I do hereby, by virtue of the power given me by section 64 of the Naval Discipline Act 1957, summon you to attend at the

*hearing for directions/court-martial

*onboard Her Majesty's Ship (name)/on shore at (place) at (time) on the (date) day of (month and year),

[*and to bring the said documents which are within your possession and control with you]

and so to attend from day to day until you shall be duly discharged; and you are hereby required to obey this summons on pain of the penalties declared by section 65 of the said Act.

I enclose a warrant which will enable you to travel to (place) free of charge. Payment of any expenses incurred by you in connection with your attendance will be made to the extent authorised by regulations made under section 64 of the Naval Discipline Act 1957.

You are to sign, detach and return the receipt slip below.

(signed)

*Court Administration Officer/Judge Advocate

(date)

(* Delete as appropriate)

ACKNOWLEDGEMENT OF RECEIPT OF WITNESS SUMMONS

In the matter of (name of accused)

I, (full name of witness in BLOCK CAPITALS)

acknowledge receipt of the summons to me to attend

at (place) on (date).

Signature Date

Return to:
Court Administration Officer
(address)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To *(rank/rate and full name)* of *(unit)*

In the matter of *(rank/rate and full name of accused)* of *(unit)*

Whereas I have been informed that your evidence will be material to the trial by court-martial of *(rank/rate and full name of accused)* of *(unit)*, you are hereby summoned to attend at the

*hearing for directions/court-martial

*onboard Her Majesty's Ship *(name)*/on shore at *(place)* at *(time)* on the *(date)* day of *(month and year)*,

and so to attend from day to day until you shall be duly discharged.

You are to sign, detach and return the receipt slip below.

(signed)

*Court Administration Officer/Judge Advocate

(date)

(Delete as appropriate)*

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS TO A BANK MANAGER²

In the matter of *(name of accused)*

I, *(full name of witness in BLOCK CAPITALS)*

acknowledge receipt of the summons to me to attend

at *(place)* on *(date)*.

Signature Date

Return to:
Court Administration Officer
(address)

¹ The names of any number of witnesses belonging to the same unit may be included in the same form.

² Where a number of witnesses from the same unit are summoned, the receipt slip should copy the declaration for each witness, with the signature and date line produced under each declaration.

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To the Manager (name of bank)

In the matter of (rank/rate and full name of accused) of (unit)

Whereas I have been informed that you have in your control certain documents which are material to the trial by court-martial of (rank/rate and full name of accused) of (unit), namely (description of documents), I do hereby, by virtue of the power given me by section 64 of the Naval Discipline Act 1957, summon you to attend at the

*hearing for directions/court-martial

*onboard Her Majesty's Ship (name)/on shore at (place) at (time) on the (date) day of (month and year),

and to produce a copy of such entries in the books of the bank, and to prove the description of each such book, whether such book was at the time of making of such entry one of the ordinary books of the bank, whether it is in the custody and control of the bank, whether each such entry was made in the ordinary course of business, and to prove that you have examined the entries and compared such copy with the original, together with such facts concerning the bank as are set out in section 9 of the Bankers' Books Evidence Act 1879

and so to attend from day to day until you shall be duly discharged; and you are hereby required to obey this summons on pain of the penalties declared by section 65 of the Naval Discipline Act 1957.

[* Note: If you, or a duly authorised officer of the bank, make an affidavit proving all the above matters, in accordance with the Bankers' Books Evidence Act 1879 (enclose relevant paragraphs), and exhibit thereto a copy of the entries specified above, and send the said affidavit and exhibit to reach me by the (day) of (month and year), the said order for you to attend the trial and give evidence will be withdrawn.]

You are to sign, detach and return the receipt slip below.

(signed)

*Court Administration Officer/Judge Advocate

(date)

(* Delete as appropriate)

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS TO A BANK MANAGER²

In the matter of (name of accused)

I, (full name of witness in BLOCK CAPITALS)

acknowledge receipt of the summons to me to attend

at (place) on (date).

Signature Date

Return to: Court Administration Officer (address)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 4FORM OF APPLICATION FOR A HEARING FOR DIRECTIONS

From: *(full name)*

To: *(Judge Advocate appointed to conduct any hearing for directions)*

APPLICATION FOR A HEARING FOR DIRECTIONS

TRIAL BY COURT-MARTIAL OF

(rank/rate, name and service number of accused)

As *prosecutor/accused's friend/accused, I hereby apply for a hearing for directions to take place to seek directions on the following matters:
(state matters on which directions are sought)

I consider that the following matters, as listed in Schedule 3 to the Courts-Martial (Royal Navy) Rules 1997, may usefully be addressed at the hearing:
(state or refer by letter)

It is requested that the witnesses whose details are given below be summoned by the Court Administration Officer to attend at the hearing:
(list witnesses and their addresses)

I confirm that the following dates would be convenient for such a hearing:
(indicate convenient dates for the hearing)

(signed)

(date)

Send copies to:
Court Administration Officer
Accused/Accused's Friend or Prosecutor

(Delete as appropriate)*

Form 5FORM OF APPLICATION FOR A PRE-TRIAL HEARING

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

From: *(full name)*

To: *(Judge Advocate appointed as a member of the court-martial)*

APPLICATION FOR A PRE-TRIAL HEARING

TRIAL BY COURT-MARTIAL OF

(rank/rate, name and service number of accused)

As "prosecutor/accused's friend/accused, I hereby apply for a pre-trial hearing to take place immediately before the commencement of the trial by court-martial before the Judge Advocate appointed as a member of the court-martial. The purpose of this application is:
(state reasons for which the application is made)

I estimate that the length of time required for such a pre-trial hearing will be:
(estimate length of time required for pre-trial hearing)

It is requested that the witnesses whose details are given below be summoned by the Court Administration Officer to attend at the pre-trial hearing:
(list witnesses and their addresses)

(signed)

(date)

Send copies to:

(* Delete as appropriate)

*Court Administration Officer
Accused/Accused's Friend or Prosecutor*

Form 6FORM OF NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE THROUGH TELEVISION LINKmade under s. 32 of the Criminal Justice Act 1988

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

From: *(full name)*

To: The Court Administration Officer
(address)

NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE THROUGH TELEVISION LINK

TRIAL BY COURT-MARTIAL OF:

(rank/rate, name and service number of accused)

As **prosecutor/accused's friend/accused*, I hereby give notice that application will be made at trial for leave to adduce the evidence of a witness, whose name is given below, by way of live television link at the trial by court-martial of the above named accused. This application will relate in particular to the following charge[s] to be tried:
(give brief details of charge)

This application is made on the following grounds:
(state grounds)

The name of the witness is:

**If the witness is under 18 years of age:*
The date of birth of the witness is:

The country and place where it is proposed this witness will be when giving evidence is:

**If required: the name, occupation and relationship to the witness of the person it is proposed should accompany the witness is:*

and the grounds for believing that person should accompany the witness are:
(state grounds)

(signed)

(date)

Send copies to:
Judge Advocate
Accused/ Accused's Friend or Prosecutor

(Delete as appropriate)*

Form 7FORM OF NOTICE OF APPLICATION FOR LEAVE TO TENDER IN EVIDENCE A VIDEO RECORDINGmade under s. 32A of the Criminal Justice Act 1988

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

From: *(full name)*

To: Court Administration Officer
(address)

NOTICE OF APPLICATION FOR LEAVE TO TENDER IN EVIDENCE A VIDEO RECORDING:

TRIAL BY COURT-MARTIAL OF:

(rank/rate, name and service number of accused)

As **prosecutor/accused's friend/accused*, I hereby give notice that application will be made at trial for leave to tender in evidence a video recording of the evidence of a witness, whose name is given below, at the trial by court-martial of the above named accused. This application will relate in particular to the following charge[s] to be tried:
(give brief details of charge)

The application is made on the following grounds:
(state grounds)

The name of the witness is:

**If the witness is under 18 years of age:*
The date of birth of the witness is:

The date on which the video recording was made is:

The circumstances in which the video recording was made were as follows:
(state circumstances)

I confirm that in my opinion the witness is willing and able to attend the court-martial for cross examination.

I enclose a copy of the video recording.

(signed)

(date)

Send copies to:
Judge Advocate
Accused/ Accused's Friend or Prosecutor

(Delete as appropriate)*

Form 8FORM OF ORDER BY COMMANDING OFFICER TO PERMIT INSPECTION OF BANKERS' BOOKS

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To *(name of bank)*

Whereas the Secretary of State under the powers conferred on him by section 58 of the Naval Discipline Act 1957 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial, during the investigation of an alleged offence, by an accused's Commanding Officer, and having received from *(rank/rate and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)* I do now, in exercise of the powers conferred on me, as the Commanding Officer of *(full name of accused)*, order that *(rank and full name of investigator)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

(signed)

Commanding Officer

(date)

Form 9 FORM OF ORDER BY JUDGE ADVOCATE TO PERMIT INSPECTION OF BANKERS' BOOKS

To *(name of bank)*

Whereas the Secretary of State under the powers conferred on him by section 58 of the Naval Discipline Act 1957 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial, at preliminary proceedings or at a court-martial, by the judge advocate, and having received from *(number, rank/rate and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)*, I do now, in exercise of the powers conferred on me, as the judge advocate appointed in connection with the trial by court-martial of *(full name of accused)*, order that *(rank and/or full name)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

(signed)

Judge Advocate

(date)

SCHEDULE 3

Rule 22

HEARING FOR DIRECTIONS

The matters which may be addressed at a hearing for directions shall include—

- (a) the issues in the case;
- (b) any indication of likely pleas;
- (c) issues, if any, as to the mental or medical condition of any defendant or witness;
- (d) the number of witnesses whose evidence will be placed before the court either orally or in writing;
- (e) the defence witnesses in (d) above whose statements have been served and whose evidence the prosecution will agree and accept in writing;

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- (f) any prosecution witnesses whom the defence require to attend at the trial;
- (g) any additional witnesses who may be called by the prosecution and the evidence that they are expected to give;
- (h) facts which are to be admitted and which can be reduced into writing in accordance with section 10(2)(b) Criminal Justice Act 1967(13), within such time as may be directed at the hearing, and of any witness whose attendance will not be required at the trial;
- (i) any exhibits and schedules which are to be admitted;
- (j) the order and pagination of the papers to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called;
- (k) any alibi which should already have been disclosed in accordance with section 11 Criminal Justice Act 1967;
- (l) any point of law which it is anticipated will arise at trial;
- (m) any question as to the admissibility of evidence which appears on the face of the papers, and any authority on which the party intends to rely;
- (n) any application to be made for evidence to be given through live television links;
- (o) any applications to submit pre-recorded interviews with a child witness as evidence in chief;
- (p) any applications for screens, for use by witnesses seeking a visual break between themselves and any relevant parties;
- (q) whether any video, tape recorder or other technical equipment will be required during a trial;
- (r) where a tape recorded interview has taken place, of any dispute or agreement as to the accuracy of any transcript or summary;
- (s) any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties;
- (t) the estimated length of the trial, to be agreed more precisely taking account of any views expressed by the judge advocate and the other parties;
- (u) witness availability and the approximate length of witness evidence;
- (v) availability of advocate;
- (w) whether there is a need for any further directions.

(13) Sections 9, 10 and 11 of the Criminal Justice Act 1967 are applied to proceedings before courts-martial subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173).

SCHEDULE 4

Rule 32

OATHS AND AFFIRMATIONS

PART I

MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

1. An oath may be administered by the person swearing the oath holding the New Testament, or if a Jew the Old Testament, in his uplifted hand and saying, or repeating after the person administering it, the oath provided in this Schedule for that category of person.
2. A Scottish oath may be administered by the person swearing the oath with uplifted hand and saying, or repeating after the person administering it, the Scottish oath provided in this Schedule for that category of person.
3. A young person making a promise or a person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering the promise or affirmation provided in this Schedule for that category of person.

PART II

FORMS OF OATH

President and members other than the judge advocate

4. I [full name] swear by Almighty God that I will duly administer justice according to law and without partiality, favour or affection; and I do further swear that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

Judge advocate

5. I [full name] swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate according to law and without partiality, favour or affection; and I do further swear that I will not on any account at any time whatsoever disclose the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Clerk of the court and person under instruction

6. I [full name] swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

Interpreter

7. I [full name] swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

Witness

8. I [full name] swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

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Form for a young person

9. I [full name] promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

PART III

FORM OF SCOTTISH OATHS

10. The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I swear by Almighty God and as I shall answer to God at the Great Day of Judgement”.

PART IV

FORM OF SOLEMN AFFIRMATIONS

11. The form of affirmation shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I solemnly, sincerely, and truly declare and affirm”.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed in court-martial trials under the Naval Discipline Act 1957 (c. 53). They accord in general with procedures in the Crown Court. These Rules replace and revoke the Naval Courts-Martial General Orders (Royal Navy) 1991 (S.I.1991/2737) and take account of changes in the law and procedure since then, in particular, to give effect to the changes in the way arrangements are made for court-martial trials made by the Armed Forces Act 1996 (c. 46).

The Rules provide for the first time for preliminary proceedings in the form of a hearing for directions, at which directions may be given by the judge advocate, and a pre-trial hearing, at which, as part of the court-martial itself, the judge advocate may make rulings before the trial of the accused commences.

Previous special provision for trials in which navigation was an issue have been repealed, so that the relevant expert evidence may now be adduced under the general rules governing the admissibility of such evidence. A new procedure for dealing with mixed pleas has been established and allowance has been made for issues of fact to be tried in relation to charges to which the accused has pleaded guilty.

Rules in relation to the admission of television link and video evidence have been included. The power to make Bankers’ Books Evidence Act 1879 orders has been given to commanding officers and judge advocates.